

Remarks

Reconsideration is requested in view of the above amendments and the following remarks. Claims 1, 6-10 and 14 have been amended, and new claims 15-18 have been added. No new matter has been added. Claims 1-3, 5-12 and 14-18 are pending.

Applicants would like to thank the Examiner for the telephone interview conducted on January 6, 2004 with the undersigned. During the interview, the Sorheim and Frantz references currently used to reject the claims under 35 USC 102(b) were discussed. Applicant's representative explained why the previous claims distinguished over Sorheim and Frantz. The Examiner indicated that the rejections would be maintained. No agreement was reached concerning the allowability of claims.

Claim 1 has been amended to better define the orientation of the block body surfaces by reciting "when the block body is laid up in a retaining wall in its intended orientation". This language is supported by page 8, lines 3-6.

New claims 15-18 depend from claim 1. These claims are supported by the original disclosure, for example page 8, lines 13-24.

Claim 6 has been amended to better define the height of the blocks of the exterior corner relative to the height of the blocks of the wall portion, and to define the height of each course. The amendment is supported by original claim 6 and the original drawings.

Claims 7-9 have been amended as a result of the amendments to claim 6, and to use terminology that is consistent with the terminology now used in claim 6.

Claim 10 has been amended to better define the height of the blocks of the first and second plurality of blocks, and to define the height of each course. Other editorial changes have been made to claim 10 as well. The amendments are supported by original claim 10 and the original drawings.

Claim 14 has been amended as a result of the amendments to claim 10, and to use terminology that is consistent with the terminology now used in claim 10.

I. Claims Rejections Under 35 U.S.C. § 102

A. Claims 1, 3, and 5 and Sorheim et al. (Sorheim)

Claims 1, 3, and 5 are rejected under section 102(b) as being anticipated by Sorheim et al. (Sorheim), U.S. Patent No. 5,820,304. This rejection is respectfully traversed.

Claim 1 recites a block body having, when the block body is laid up in a wall in its intended orientation, opposed side surfaces, opposed end surfaces, a top surface and bottom surface, at least one of said side surfaces and one of said end surfaces being textured.

The rejection refers to rotating the block of Sorheim such that the surface 4 is the top surface. During the above-referenced interview, the Examiner indicated that the claimed block was not limited in orientation, and reiterated that the Sorheim block, when rotated, reads on the claimed invention. Claim 1 has now been amended to recite the orientation of the claimed block.

Sorheim discloses a block 2 that includes a key way 6 formed in a rear face 4. Sorheim, Figure 1. Sorheim fails to disclose or suggest that the block can be used as a corner block as required by claim 1. In addition, Sorheim does not disclose a block that has a block body as claimed when the block body is laid up in a wall in its intended orientation. In particular, Sorheim does not disclose a block body having a channel formed in the top surface of the block body.

In Sorheim, the block 2 is laid up in a wall, as shown in Figure 4, so that the surface 7 is the top surface, and the surface 4 containing the key way 6 is the rear surface. Therefore, in the intended orientation of the Sorheim block, the block does not contain every feature recited in claim 1.

Nor would it be obvious to lay up the Sorheim block in a wall so that the surface 4 with the key way 6 is the top surface. In such an orientation, the anchor 12 that is intended to cooperate with the key way 6 would extend upwardly from the surface 4 and prevent additional blocks from being stacked on top of the block.

For at least these reasons, reconsideration and allowance of claim 1 and dependent claims 3 and 5 are respectfully requested.

B. Claims 6-10, 12 and 14 and Frantz

Claims 6-10, 12 and 14 are rejected under section 102(b) as being anticipated by Frantz, U.S. Patent No. 2,994,162. This rejection is respectfully traversed.

Claim 6 has been amended to recite a retaining wall that comprises a first plurality of blocks and a second plurality of blocks arranged into courses, the first plurality of blocks defining an exterior corner of the wall and the second plurality of blocks defining a wall portion adjacent the exterior corner, wherein each block of the second plurality of blocks has a first

height that defines the height of each course, and the blocks of the first plurality of blocks each have a second height that is less than the first height.

Claim 10 also recites a retaining wall. The retaining wall of claim 10, as now amended, comprises a plurality of courses, each course comprising a first plurality of blocks forming an exterior corner portion and a second plurality of blocks forming a wall portion adjacent the exterior corner portion. Each block of said first plurality of blocks and said second plurality of blocks includes a channel formed in a top surface thereof. For each course, each block of said second plurality of blocks has a first height that defines the height of the course and each block of said first plurality of blocks has a second height that is less than the first height, and a reinforcement member retaining bar is disposed within the channels in said second plurality of blocks, and at least a portion of said retaining bar being disposed within the channel of at least one block of the first plurality of blocks.

Frantz does not disclose a wall as recited in claim 6 where each block in the second plurality of blocks has a first height that defines the height of each course, and where the blocks of the first plurality of blocks each have a second height that is less than the first height. Further, Frantz does not disclose a wall as recited in claim 10, where, for each course, each block of the second plurality of blocks has a first height that defines the height of the course, and each block of the first plurality of blocks has a second height that is less than the first height.

The rejection suggests that each course in Frantz is formed by two rows of blocks. However, claims 6 and 10 each recite that each block of the second plurality of blocks has a first height that defines the course height. The height of each block in Frantz defines the height of each course, and the blocks in each course each have the same height. Frantz does not teach or suggest blocks that have a second height that is less than the height of other blocks in the course. As a result, the interpretation applied by the Examiner does not apply.

For at least these reasons, Frantz fails to anticipate claims 6 and 10, as well as claims 7-9, 12 and 14 that depend therefrom. Reconsideration and allowance are respectfully requested.

II. Claim Rejections Under 35 U.S.C. § 103

Claim 11 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Frantz in view of Miller et al., U.S. Patent No. 5,595,460. This rejection is respectfully traversed.

Claim 11 depends from claim 10 and is allowable along with claim 10. As noted above, Frantz does not disclose a retaining wall as recited in claim 10.

Miller is cited solely for disclosing a retaining wall including reinforcement material. While the rejection's characterization of Miller is not conceded, Miller fails to remedy the shortcomings of Frantz noted above.

For at least these reasons, reconsideration and allowance of claim 11 is respectfully requested.

III. Allowable Subject Matter

The indicated allowability of the subject matter of claim 2 is gratefully noted. As indicated above, the remaining claims are believed to be allowable as well.

IV. Conclusion

In view of the above amendments and remarks, all claims should now be in condition for allowance. Favorable reconsideration is respectfully requested. The Examiner is encouraged to contact the undersigned Attorney with any questions regarding this application.

Respectfully submitted,
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